IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 16963 of 2004

Between:

Mohd Abdul Khader, S/o. Mohd Abdul Kareem,
r/o.16-9-406/3/2/1, Old Malakpet Hyderabad.

..... PETITIONER

AND

1. Deputy Commercial Tax Officer, Khairatabad Circle, Mayur

Kushal Towers, Gunfoundry, Hyd.
2 Deputy Commercial Tax Officer, Malakpet Circle,

Gaganvihar Complex, M.J.Road, Hyderabad.
3 Smt.Samina Yasmeen, D/o. Mohd Abdul Hadi,
H.No.23-1-541, Kotal Alijah Hyderabad, GPA Holder of

Mohd Abdul Hadi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ of Certiorari or any other appropriate writ or order or direction calling for the records of the 1st Respondent and 2nd Respondent Dt.31.7.2004 in Form -7 proposing to auction petitioner's house property stating that the house property belongs to the erstwhile Director of M/s Maha Cement Products Pvt.Ltd., vide H.No.16-9-406/3/2/1, Old Malakpet, Hyderabad, and quash the same as arbitrary, contrary to law and without jurisdiction and consequently direct the 1st and 2nd

respondents to revoke the Auction Notice Dt.31.7.2004 in Form-7 issued under the Revenue Recovery Act to the Petitioner's House property.

Counsel for the Petitioner: Mr.Shaik Jeelani Basha, Advocate.

For the Respondents 1&2: Special Standing Counsel for Commercial Tax.

The Court made the following:

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THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE C.V. RAMULU

WRIT PETITION NO. 16963 OF 2004

ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue an appropriate writ, order or direction declaring the proceedings dated 31-07-2004 in Form – 7 proposing to auction the house property bearing No. 16-9-406/3/2/1 situated at Old Malakpet, Hyderabad as illegal and without jurisdiction. The petitioner accordingly prays for issuance of consequential directions to the respondents to revoke the auction notice issued under the provisions of the Revenue Recovery Act, 1864.

In order to consider as to whether the petitioner is entitled for any relief, a few relevant facts leading to filing of this writ petition may have to be noticed.

That one company by name M/s. Maha Cements Products Private Limited was engaged in the manufacture and sale of cement with its manufacturing unit at Gosaiguda, Ranga Reddy District. The Company was an assessee on the rolls of the Commercial Tax Officer, Khairatabad Circle. The following persons were the Directors of the said Company:

1. Sri M.A. Wedood - Chairman.
2. Sri M.A. Bari - Managing Director.
3. Sri M.A. Kladood - Director.
4. Smt. Surraya Yasmeen - Director.

D/o M. A. Hadi

The Company fell in arrears of sales tax for the assessment years 1990-91 to 1994-95 amounting to Rs.10,64,206/-. The Department in spite of its best efforts could not realize the arrears of sales tax since the Company did not have any movable or immovable properties. The Company closed its business operations long ago and all the Company's properties were sold.

The Department with a view to safeguard the revenue of the State made discreet enquiries about possession of any movable or immovable properties by any one of the Company's erstwhile Directors. In the course of said enquiry, it was found that a house admeasuring 150 square yards at Door No. 16-9-406/3/2/1, Old Malakpet, Hyderabad stands in the name of M.A. Hadi, Chairman of the Company. The Encumbrance Certificate obtained by the Department from the Sub-Registrar on 23-10-2001 indicates that the said property stands in the names of M.A. Hadi and M.A. Bari who were the Chairman and the Managing Director respectively of the defunct Company.

Section 16-B of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act') imposes liability on directors of private company in liquidation for the payment of tax due and it says that when any private company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax. It is however open to such directors to prove that non-recovery of the tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company. The Department in the instant case having made appropriate enquiry found that nonpayment of tax can be attributed to the negligence of the directors of the company.

In order to realize the outstanding arrears of sales tax due and payable by the said Company, the Department has decided to proceed against the said property which stands in the names of the Chairman and the Managing Director of the defunct Company. Accordingly, the 2nd respondent issued notice of attachment dated 13-11-2001 and the same was served on M.A. Bari, Managing Director of the defunct Company. This notice was followed by attachment in Form 5 dated 31-12-2001 under the provisions of the Revenue Recovery Act, 1864. The said attachment notice was also served on the Managing Director of the Company on 02-02-2002. Finally, Form 7-A was published in the Hyderabad District Gazette on 13-09-2004 followed by the auction notice published in the two reputed daily news papers dated 18-09-2004.

The writ petitioner herein questions the said notice and the proceedings initiated for

the realization of the sales tax arrears claiming to be the true and absolute owner and possessor of the said house property sought to be auctioned by the Department for realization of arrears of sales tax. The petitioner claims to have purchased the said property from the absolute owner one
Mr. Mohd. Abdul Hadi through his G.P.A Holder Smt. Samina Yasmeen on payment of sale consideration of Rs.6.25 Lakhs vide the agreement of sale dated 18-11-2002. The petitioner accordingly raised objection for the auction of the said property. The petitioner claims to be a bonafide purchaser of the property.

The case set up by the petitioner is that he has no knowledge of the arrears of tax, if any, payable by the Company and liability of the Director for payment of such arrears of tax.

The agreement of sale dated 18-11-2002 is an unregistered one. The claim of the petitioner to be in physical possession of the schedule property is falsified by one of the clauses in the agreement which says that the physical possession of the schedule property to the vendee shall be delivered at the time of execution of the registration of the sale deed. The fact remains that so far no sale deed has been executed. The agreement of sale does not inspire any confidence whatsoever. It is not possible to rely upon such agreements of sale which can be pressed into service by any defaulting director. That apart, the notice of attachment is
dated 13-11-2001 which was admittedly served on the Managing Director of the defunct Company. The agreement of sale is
dated 18-11-2002 almost about one year subsequent to the date of attachment of the property. Section 17-A of the Act provides that where during the pendency of any proceedings under this Act, any dealer creates, a charge on, or parts with possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to

defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, provided that such charge or transfer shall not be void if it is made- (a) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or (b) with the previous permission of the assessing authority.

Learned counsel for the petitioner placed reliance upon the decision of this Court reported in ***Damera Ramakrishna & Ors. Vs. The Commercial Tax Officer (FAC), Suryaraopet & Others (APHC)*** in which this Court held that onus in the first instance is on the Department to prove that there was a fraud and the transaction was made only to defeat the rights of the Department to recover the tax and in case the Department was able to prove it, then the onus would shift to the purchasers to show that they were not parties to the fraud played by the assessee towards the Department. Learned counsel for the petitioner contended that the Department did not discharge the burden cast on it and failed to prove that the transaction was made only to defeat the rights of the Department.

It is totally unnecessary to go into this aspect of the matter since the petitioner traces his title not under any sale deed but under an agreement of sale. That an agreement of sale by itself does not confer any right, title and interest in any immovable property. The contention that the petitioner has become the owner of the property under an agreement of sale is liable to be rejected and the same is accordingly rejected. The only remedy of the petitioner is to proceed against the vendor for the realization of the sale consideration together with damages, if any. Suffice it to hold that the proceedings initiated by the Department under the provisions of the Revenue Recovery Act, 1864 for realization of the sales tax due from the Directors of

the defunct Company cannot be interfered with by this Court at the instance of an agreement holder.

For the aforesaid reasons, we find no merit in this writ petition and the same shall accordingly stand dismissed without any order as to costs.

(B. Sudershan Reddy, J)

-04-2005

(C.V. Ramulu, J)

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To

1. Deputy Commercial Tax Officer, Khairatabad Circle, Mayur Kushal Towers, Gunfoundry, Hyd.
2 Deputy Commercial Tax Officer, Malakpet Circle, Gaganvihar Complex, M.J.Road, Hyderabad.
3 Two CCs to the Special Standing Counsel for Commercial Tax, High Court of Andhra Pradesh, Hyderabad (OUT).
4. Two CD copies.